

REMARKS

Claims 1, 22-37, and 41-60 are pending in the application for the Examiner's review and consideration.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 1, 22-37, and 41-60 were rejected under 35 U.S.C. §103(a) as being allegedly obvious over United States Patent No. 5,532,023 to Vogel *et al.* ("Vogel"). Applicants respectfully traverse the rejection.

Vogel discloses a process for determining acceptable commercial wrinkle reducing active mixtures. The compositions of this process contain a wrinkle reducing active, comprising an effective amount of silicone; an effective amount of film forming polymer; and a liquid carrier. *See, e.g.,* Vogel, col. 2, lines 4-10. Any type of silicone can be used to impart the lubricating property of Vogel. *See, e.g.,* Vogel, col. 2, lines 22-24.

On pages 2-3 of the Office Action, it states that "it would have been obvious to one of ordinary skill in the art to formulate a wrinkle reducing composition containing anionic or cationic surfactants, choline esters and organic solvents as these components are taught as suitable in the wrinkle reducing compositions of Vogel *et al.*" Applicants respectfully submit that the Office Action is impermissibly using hindsight to reject the claims as obvious.

The Office Action is improperly using hindsight to reject the claims as obvious. Hindsight cannot be used to reject the claims as obvious. *See, e.g., In re Sernaker*, 702 F.2d 989, 994 (Fed. Cir. 1983); *In re Rinehart*, 531 F.2d 1048 (CCPA 1976); *In re Imperato*, 486 F.2d 585 (CCPA 1973); *In re Adams*, 356 F.2d 998 (CCPA 1966). It is legally improper to select from the prior art the separate components of the inventor's combination, using the blueprint supplied by the inventor. *See, e.g., C.R. Bard Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1352 (Fed. Cir. 1998) citing *Fromson v. Advance Offset Plate, Inc.*, 755 F.2d 1549, 1556 (Fed. Cir. 1985) (holding the prior art must suggest to one of ordinary skill in the art the desirability of the claimed combination).

Vogel discloses a composition comprising an effective amount of silicone, an effective amount of film-forming polymer, and a liquid carrier. *See, e.g.,* Vogel, col. 2, lines 4-10. As optional ingredients, Vogel lists, ethoxylated surfactants, soil release polymers, antistatic agents, as well as other optional ingredients. The Office Action is

attempting to take several components from the optional adjuncts in order to form the compositions of the present invention. Indeed, the polyhydric alcohols (col. 12 lines 55-67), alkylene glycols (col. 12, lines 55-67), choline esters (col. 11, lines 17-48), alkyl ether sulfates (col. 8, lines 41-62), and ethoxylated surfactants (col. 9, lines 29-35) are all disclosed by Vogel as optional ingredients¹. Also, the required silicone reducing actives of Vogel are not required of the present invention. *See, e.g.*, Vogel, col. 2, lines 5-10. Furthermore, in the case where a silicone containing material is a component of the present invention, the silicone containing materials are drawn to silicone surfactants, specifically polyalkyleneoxide polysiloxanes (*See, e.g.*, Specification, page 37, line 31 to page 39, line 30), and not any type of silicone, as disclosed in Vogel (*See, e.g.*, Vogel, col. 2, lines 22-24).

Applicants respectfully submit that the Office Action improperly used hindsight to reject the above referenced claims. Therefore, Applicants respectfully request that all of the rejections made under 35 U.S.C. §103(a) be reconsidered and withdrawn.

With regard to all claims not specifically mentioned, these are believed to be allowable not only in view of their dependency on their respective base claims and any intervening claims, but also for the totality of features recited therein.

All claims are believed to be in condition for allowance. Should the Examiner disagree, Applicants respectfully invite the Examiner to contact the undersigned attorney for Applicants to arrange for a telephonic interview in an effort to expedite the prosecution of this matter.

¹ Optional ingredients in Vogel begin at column 8, line 40.

CONCLUSION

In view of the foregoing amendments and accompanying remarks, reconsideration of the application and allowance of all claims are respectfully requested. No fee is believed to be due for the amendments herein. Should any fee be required, please charge such fee to Procter & Gamble Deposit Account No. 16-2480.

Respectfully submitted,

By 

Mark A. Charles
Attorney for Applicant
Registration No. 51,547
Tel. No. (513) 627-4229

Dated: July 29, 2003
Customer Number: 27752